

Department of Veterans Affairs

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transportation is not available) between a veteran population center sufficient for the establishment of a State home and any existing State home. The determination regarding a request for an exception will be made by the Secretary.

(Authority: 38 U.S.C. 101, 501, 1710, 1742, 8105, 8131–8137)

[66 FR 33847, June 26, 2001, as amended at 75 FR 17860, Apr. 8, 2010]

§ 59.50 Priority list.

(a) The Secretary will make a list prioritizing the applications that were received on or before April 15 and that were approved under § 59.20 of this part. Except as otherwise provided in this section, applications will be prioritized from the highest to the lowest in the following order:

(1) *Priority group 1.* An application from a State that has made sufficient funds available for the project for which the grant is requested so that such project may proceed upon approval of the grant without further action required by the State (such as subsequent issuance of bonds) to make such funds available for the project. To meet this criteria, the State must provide to VA a letter from an authorized State budget official certifying that the State funds are, or will be, available for the project, so that if VA awards the grant, the project may proceed without further State action to make such funds available (such as further action to issue bonds). If the certification is based on an Act authorizing the project and making available the State's matching funds for the project, a copy of the Act must be submitted with the certification.

(i) *Priority group 1—subpriority 1.* An application for a life or safety project, which means a project to remedy a condition, or conditions, at an existing facility that have been cited as threatening to the lives or safety of one or more of the residents or program participants in the facility by a VA safety office, VA engineering office, or other VA office with responsibility for life and safety inspections; a State or local government agency (including a Fire Marshal); or an accrediting institution (including the Joint Commission on Accreditation of Healthcare Organiza-

tions). Unless an addition or replacement of building utility systems or features is necessary to remedy a cited threat to the lives or safety of residents and program participants, this priority group does not include applications for the addition or replacement of building utility systems or features; such applications will be prioritized in accordance with the criteria in subpriority group 5 of priority group 1. An application may be included in this subpriority group only if all of the funds requested would be used for a life or safety project; or, if the estimated cost of the life or safety project is under \$400,000.00, and the majority of the funds requested would be used for such a project. Projects in this subpriority group will be further prioritized in the following order:

- (A) Seismic;
- (B) Building construction;
- (C) Egress;
- (D) Building compartmentalization (e.g., smoke barrier, fire walls);
- (E) Fire alarm/detection;
- (F) Security;
- (G) Asbestos/hazardous materials; and
- (H) All other projects (e.g., nurse call systems, patient lifts).

(ii) *Priority group 1—subpriority 2.* An application from a State that has not previously applied for a grant under 38 U.S.C. 8131–8137 for construction or acquisition of a State nursing home.

(iii) *Priority group 1—subpriority 3.* An application for construction or acquisition of a nursing home or domiciliary from a State that has a great need for the beds that the State, in that application, proposes to establish.

(iv) *Priority group 1—subpriority 4.* An application from a State for renovations to a State Home facility other than renovations that would be included in subpriority group 1 of priority group 1. Projects will be further prioritized in the following order:

- (A) Adult day health care renovation and construction of a new adult day health care facility that replaces an existing facility;
- (B) Nursing home renovation (e.g., patient privacy) and construction of a new nursing home that replaces an existing nursing home;

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(C) Code compliance under the Americans with Disabilities Act;

(D) Building systems and utilities (e.g., electrical; heating, ventilation, and air conditioning (HVAC); boiler; medical gasses; roof; elevators);

(E) Clinical-support facilities (e.g., for dietetics, laundry, rehabilitation therapy); and

(F) General renovation/upgrade (e.g., warehouse, storage, administration/office, multipurpose).

(v) *Priority group 1—subpriority 5.* An application for construction or acquisition of a nursing home or domiciliary from a State that has a significant need for the beds that the State in that application proposes to establish.

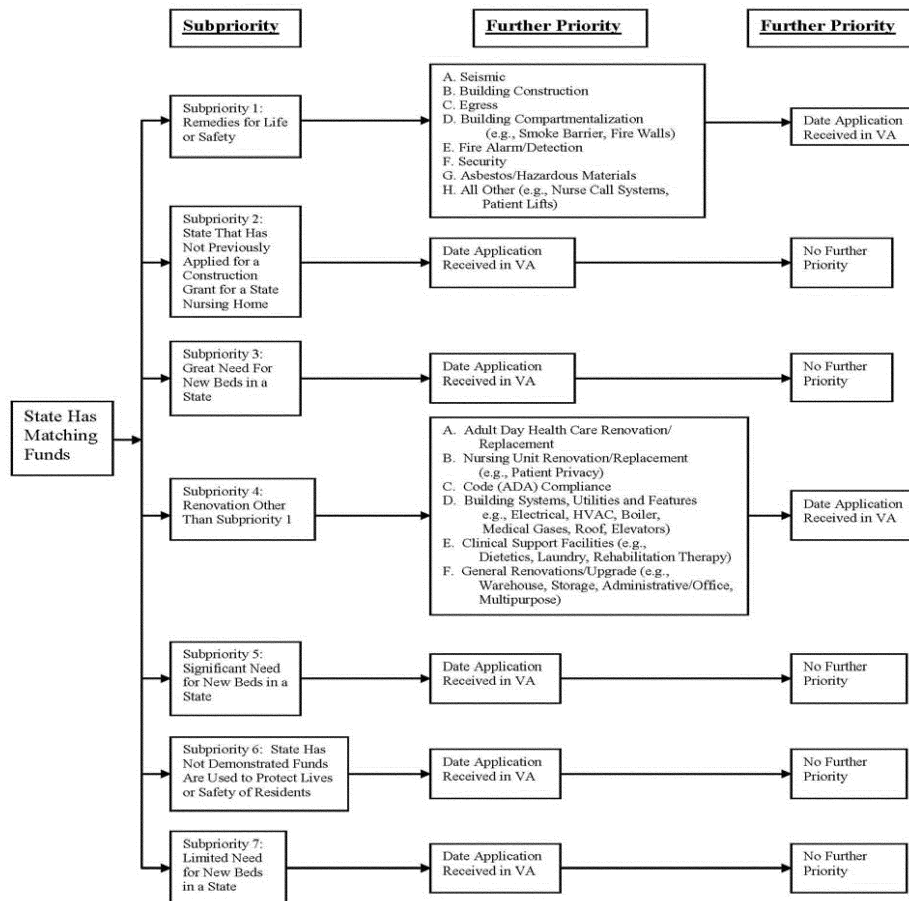
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(vi) *Priority group 1—subpriority 6.* An application for construction or acquisition of a nursing home or domiciliary from a State that has not demonstrated that State funds are being used to protect the lives or safety of the residents and program participants of the facility as required in § 59.50(e).

(vii) *Priority group 1—subpriority 7.* An application for construction or acquisition of a nursing home or domiciliary from a State that has a limited need for the beds that the State, in that application, proposes to establish.

NOTE TO PARAGRAPH (a)(1): The following chart is intended to provide a graphic aid for understanding priority group 1 and its subpriorities.

Example – Prioritization for Priority Group 1



(2) *Priority group 2.* An application not meeting the criteria of paragraph (a)(1) of this section but meeting the criteria of paragraph (a)(1)(i) of this section. Projects within this priority group will be further prioritized the same as in paragraphs (a)(1)(i)(A) through (a)(1)(i)(H) of this section.

(3) *Priority group 3.* An application not meeting the criteria of paragraph (a)(1) of this section but meeting the

criteria of paragraph (a)(1)(ii) of this section.

(4) *Priority group 4.* An application not meeting the criteria of paragraph (a)(1) of this section but meeting the criteria of paragraph (a)(1)(iii) of this section.

(5) *Priority group 5.* An application not meeting the criteria of paragraph (a)(1) of this section but meeting the criteria of paragraph (a)(1)(iv) of this section. Projects within this priority

group will be further prioritized the same as in paragraphs (a)(1)(iv)(A) through (a)(1)(iv)(F) of this section.

(6) *Priority group 6.* An application not meeting the criteria of paragraph (a)(1) of this section but meeting the criteria of paragraph (a)(1)(v) of this section.

(7) *Priority group 7.* An application not meeting the criteria of paragraph (a)(1) of this section but meeting the criteria of paragraph (a)(1)(vi) of this section.

(8) *Priority group 8.* An application not meeting the criteria of paragraph (a)(1) of this section but meeting the criteria of paragraph (a)(1)(vii) of this section.

(b)(1) If a State accepts a partial grant for a project under § 59.80(a)(2), VA will give that project the highest priority for the next fiscal year within the priority group to which it is assigned (without further prioritization of that priority group) to receive up to 30 percent of the funds available for that year. Funds available do not include funds conditionally obligated in the previous fiscal year under § 59.70(a)(2).

(2) If, in a given fiscal year, more than one State previously accepted a partial grant under § 59.80(a)(2), these partial-grant recipients will be further prioritized on the priority list for that fiscal year based on the date that VA first awarded a partial grant for the project (the earlier the grant was awarded, the higher the priority given). The partial-grant recipients, in aggregate, may receive up to 30 percent of the funds available for that year that would be set aside for partial-grant recipients.

(c) An application will be given priority on the priority list (after applications described in paragraph (b) of this section) for the next fiscal year ahead of all applications that had not been approved under § 59.20 on the date that the application was approved under § 59.20, if:

(1) During the current fiscal year VA would have awarded a grant based on the application except for the fact that VA determined that the State did not, by July 1, provide evidence that it had its matching funds for the project, and

(2) The State was notified prior to July 1 that VA had funding available for this grant application.

(d) Applications in each priority or subpriority group will be further prioritized based on the date the application was received in VA (the earlier the application was received, the higher the priority given). Projects will be prioritized under this paragraph after all prioritization is completed under the projects' priority or subpriority group, as specified in paragraph (a) of this section, and only if necessary to give separate priorities to applications that have the same priority ranking after the prioritization specified in paragraph (a) of this section is accomplished.

(e) If any State home in a State has been cited by a VA safety office, VA engineering office, or other VA office with responsibility for life and safety inspections; a State or local government agency (including a Fire Marshal); or an accrediting institution (including the Joint Commission on Accreditation of Healthcare Organizations) for conditions that threaten the lives or safety of one or more of the residents or program participants in the facility, the State must include in any application submitted under § 59.20 or its updates to such application its plan to address all such citations. If VA determines that the State's plan fails to set forth how it will address such citations in a reasonable period of time, then VA will prioritize all applications of such State as follows:

(1) Applications that meet the criteria of paragraph (a)(1) of this section, but do not meet the criteria of paragraphs (a)(1)(i) or (vii) of this section, will be prioritized in subpriority group 6 of priority group 1 (paragraph (a)(1)(vi) of this section).

(2) Applications not meeting the criteria for placement in priority group 1 (paragraph (a)(1) of this section) and not meeting the criteria of subpriority group 1 of priority group 1 (paragraph (a)(1)(i) of this section) will be prioritized in priority group 7 (paragraph (a)(7) of this section).

(f) The priority list will not contain any project for the construction or acquisition of a hospital or hospital beds.

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(g) For purposes of establishing priorities under this section:

(1) A State has a great need for nursing home and domiciliary beds if the State:

(i) Has no State homes with nursing home or domiciliary beds, or

(ii) Has an unmet need of 2,000 or more nursing home and domiciliary beds;

(2) A State has a significant need for nursing home and domiciliary beds if the State has an unmet need of 1,000 to 1,999 nursing home and domiciliary beds; and

(3) A State has a limited need for nursing home and domiciliary beds if the State has an unmet need of 999 or fewer nursing home and domiciliary beds.

(h) Except for applications that must be included in subpriority group 1 of priority group 1, applications for projects with components that could be prioritized in more than one priority group will be placed in the priority group toward which the largest share of the cost of the project is allocated. Once the correct priority group is determined, applications for projects with components that could be prioritized in more than one subpriority group in that priority group will be placed in the subpriority group toward which the largest share of the cost of the project is allocated. For example, if a project for which 25 percent of the funds needed would address seismic issues and 75 percent of the funds needed would be for building construction in a State with a great need for new beds, the project would be placed in subpriority group 3. If the highest-cost component of an application for multiple projects does not meet the criteria for placement in priority group 1, subpriority group 1, because it is estimated to cost \$400,000.00 or more, it will be prioritized based on the component with the next largest share of the cost.

(i) Once the Secretary prioritizes the applications in the priority list, VA will not change the priorities unless a

change is necessary as a result of an appeal.

(Authority: 38 U.S.C. 101, 501, 1710, 1742, 8105, 8131–8137)

[66 FR 33847, June 26, 2001, as amended at 71 FR 46104, Aug. 11, 2006; 77 FR 10665, Feb. 23, 2012; 78 FR 21265, Apr. 10, 2013]

§ 59.60 Additional application requirements.

For a project to be eligible for a grant under this part for the fiscal year for which the priority list was made, during that fiscal year the State must submit to VA an original and a copy of the following:

(a) Complete, updated Standard Forms 424 (mark the box labeled application and submit the information requested for an application), 424C, and 424D (these forms are available on the internet Web site provided in § 59.170 of this part), and

(b) A completed VA Form 10–0388–5 and all information and documentation specified by VA Form 10–0388–5 (this form is available on the internet Web site provided in § 59.170).

(Authority: 38 U.S.C. 101, 501, 1710, 1742, 8105, 8131–8137)

[66 FR 33847, June 26, 2001, as amended at 73 FR 58880, Oct. 8, 2008]

§ 59.70 Award of grants.

(a) The Secretary, during the fiscal year for which a priority list is made under this part, will:

(1) Award a grant for each application that has been approved under § 59.20, that is sufficiently high on the priority list so that funding is available for the application, that meets the additional application requirements in § 59.60, and that meets all other requirements under this part for obtaining a grant, or

(2) Conditionally approve a grant for a project for which a State has submitted an application that substantially meets the requirements of this part if the State representative requests conditional approval and provides written assurance that the State will meet all requirements for a grant not later than 180 calendar days after the date of conditional approval. If a State that has obtained conditional approval for a project does not meet all of